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ORIGINAL

JOHN B. ADAMS Senior Attorney



September 16, 1997

RECEIVED

SEP 16 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed for filing is an original and four copies of the comments of Citizens Communications in response to the Further Notice of Proposed Rulemaking in CC Docket No. 94-129, FCC 97-248 (released July 15, 1997). Also enclosed is a motion to accept late-filed comments.

Please date stamp the enclosed receipt copies and return them to the messenger delivering these materials.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. B. Adams".

John B. Adams
Senior Attorney

CC: Cathy Seidel
ITS

Enclosures

No. of Copies rec'd 024
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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SEP 16 1997

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-129

MOTION TO ACCEPT LATE-FILED COMMENTS

Pursuant to the Commission's Public Notice (DA 97-1746, released August 15, 1997) establishing a pleading cycle in this proceeding, comments were due to be filed on September 15, 1997. Because of an administrative oversight, these comments are being filed at midday on September 16, 1997, less than one day late. Citizens apologizes for the delay. Given, however, the brief amount of time that these comments are late, no party will be prejudiced by accepting them. Further, other parties will have opportunity to respond to them in reply comments.

WHEREFORE, Citizens Utilities Company and its telecommunications subsidiaries respectfully request that these comments be accepted for filing in the above-captioned proceeding.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "John B. Adams", is written over a horizontal line.

John B. Adams
Senior Attorney

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-129

COMMENTS OF CITIZENS COMMUNICATIONS

Citizens Utilities Company, on behalf of itself and its telecommunications subsidiaries (collectively, Citizens), by its attorney, hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) and Memorandum Opinion and Order on Reconsideration (FCC 97-248) released July 15, 1997 and Public Notice (DA 97-1746) released August 15, 1997 in the above-captioned proceeding and shows as follows:

I. INTRODUCTION

Citizens Utilities Company, through divisions and subsidiaries, provides local telecommunications services, electric distribution, natural gas transmission and distribution, and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. Citizens Utilities Company subsidiary incumbent local exchange carriers (Citizens LECs) provide local exchange services in suburban and rural exchange areas in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West

Virginia. In addition, Citizens Telecommunications Company, another Citizens Utilities Company subsidiary, provides interexchange services throughout the nation and competitive local exchange services in several states. Another Citizens Utilities Company subsidiary, Electric Lightwave, Inc., provides competitive local exchange and interexchange services in Arizona, California, Idaho, Minnesota, Nevada, Oregon, Washington, and Utah.

II. COMMENTS

The Commission sought comment on a number of issues, including subscriber-to-carrier liability and carrier-to-carrier liability. Citizens comments on these liability issues.

Subscriber-to-Carrier Liability

Until the subscriber is notified of an unauthorized change of his or her carrier, the subscriber should not be liable for any charges assessed by the unauthorized carrier. After the subscriber receives notice of the unauthorized change and has had a reasonable opportunity to switch back to his or her carrier of choice, the subscriber should become liable for future charges. Otherwise, an unscrupulous subscriber could obtain service without charge for an indefinite period of time.¹ Further, the fact that a particular subscriber has taken no affirmative action to switch to another carrier in a reasonable time after notice indicates that the subscriber has ratified the new carrier as his or her carrier of choice.

¹ Citizens has experienced this first hand. Earlier this year, an error in the third-party verification process resulted in a number of subscribers being inadvertently switched to Citizens' long distance service. Among other things, Citizens waived all charges to these subscribers. Although most subscribers quickly switched back to their preferred carrier, a few subscribers lingered with Citizens and significantly increased their usage during the waiver period.

Citizens believes that allowing a customer 30 days after notice is a reasonable time for the customer to switch to another carrier before becoming liable for future charges.² Although it is likely that customers who desire to presubscribe to another carrier will make the change quickly after notice, 30 days will allow for extenuating circumstances³ that may hinder a customer from making the change more quickly.

Absolving customers of the duty to pay for calls unwittingly placed on the network of an unauthorized carrier has the advantage of providing additional incentives for carriers to exercise care in their PIC-change practices. In essence, the financial incentive for carriers to intentionally slam customers is removed. Further, a financial incentive for carriers to be careful to not mistakenly switch customers is created. It also ensures that customers who have had their presubscribed carriers changed without their authorization will not be charged rates that are potentially higher than those of their preferred carrier.

Absolution, unfortunately, has serious disadvantages if not properly limited. The primary disadvantage is that an unscrupulous customer could use the services of the unauthorized carrier indefinitely without paying for such use. While some may argue that carriers who switch customers without proper authorization ought to be subject to whatever evils befall them, it is possible to achieve the desired deterrent effect without forever penalizing a carrier, potentially to the point of an unconstitutional taking. Additionally, such arguments do not account for the

² Citizens has put its suggestion into practice. In those unfortunate circumstances where Citizens has inadvertently switched customers away from their preferred carrier, Citizens has waived charges to the customers for 30 days following notice of the unauthorized change. Citizens has received no negative feedback regarding this process.

³ Such extenuating circumstances may include, *inter alia*, extended vacations, business travel, and illness.

instances of inadvertent, good-faith errors made by carriers who do not intentionally slam customers.

Limiting to 30 days the period during which a customer is not liable to pay the slamming carrier provides a reasonable balance between the interests of customers and carriers. Customers have an interest in not paying for charges billed by an unauthorized carrier. On the other hand, carriers have an interest in ensuring that customers do not take undue advantage of “free” long distance, especially where the unauthorized change is inadvertent. Citizens proposal appropriately balances these interests. It also effectively deters unscrupulous carriers who intentionally slam customers.

Carrier-to-Carrier Liability

Citizens believes that it is appropriate to require the unauthorized carrier to remit charges to the authorized carrier only where the unauthorized carrier has actually collected charges from the customer. Indeed, the plain language of Section 258(b) states that unauthorized carriers must remit such charges only if the unauthorized carrier “collects charges . . . after such violation.” Thus, in those situations where the unauthorized carrier is prohibited from collecting charges from the customer, no charges may be remitted to the authorized carrier. Accordingly, the Commission should not require carriers to remit such charges if it implements the proposal to absolve customers of liability to pay for calls placed using the unauthorized carrier’s service.

Because of the burden on carriers and the Commission to create rules and business processes, and to resolve disputes regarding remittance of charges among carriers, Citizens believes that the better approach is to, for a limited period of time, absolve customers of liability to pay. This approach creates the same deterrent effect against slamming as does inter-carrier

remittance of charges -- the removal of the economic incentive to slam -- while reducing the burden on the Commission and on the carriers. Moreover, customers are not forced to pay rates that may be significantly higher than those charged by their preferred carrier as they would be if the unauthorized carrier were permitted to charge the customer and then forced to remit those charges to the authorized carrier. The remittance option may also create a windfall to the authorized carrier.

Should the Commission prefer to implement inter-carrier remittance of charges instead of absolving customers of liability for charges to the unauthorized carrier, it should draw a distinction between carriers that intentionally slam customers and those that do so through a good-faith mistake. It is beyond serious dispute that intentional slammers should not benefit from their unlawful activities. Citizens believes that intentional slammers ought to be forced to remit any charges they collect from the customer to the authorized carrier. Indeed, the best way to prevent intentional slamming is to make it unprofitable.

On the other hand, some instances of slamming occur even though a carrier is acting in good faith and is diligently trying to comply with the Commission's PIC change verification procedures. Such carriers do not have the same level of culpability as carriers that go about intentionally slamming customers. A carrier that accidentally changes a customer from his or her preferred long distance carrier, however, should not be forced to remit such charges. Forcing such carriers to remit the charges collected will not have the same deterrent effect because they did not intend to slam in the first place.

III. CONCLUSION

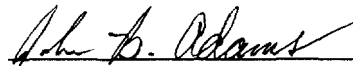
Customers ought to be absolved from liability to pay charges to an unauthorized carrier for a reasonable period of time following notice of the unauthorized PIC change. 30 days is a reasonable time because it gives customers ample opportunity, even in the presence of extenuating circumstances, to change back to the carrier of their choice. At the same time, limiting the period during which customers are not liable precludes unscrupulous customers from taking undue advantage of the carrier's inability to collect charges for services actually rendered.

Absolving customers of liability to pay charges assessed by unauthorized carriers is preferable to allowing unauthorized carriers to assess charges and then forcing them to remit the charges to the authorized carrier. Forcing carriers to remit such charges may result in a windfall to the authorized carrier. It will also result in significantly increased burdens on carriers and the Commission to create and implement rules and business procedures, and to resolve disputes. It will not, however, have any greater deterrent effect.

Should the Commission decide to require unauthorized carriers to remit collected charges to the authorized carrier, it should make a distinction between intentional and unintentional slammers. Carriers that have engaged in intentional slamming ought to be forced to remit charges they have collected, while carriers that have accidentally changed a customer's carrier without authorization should not. Only intentional slamming will be deterred by forcing the unauthorized carrier to remit charges it collects to the authorized carrier.

Respectfully Submitted,

CITIZENS UTILITIES COMPANY

By: 
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September 12, 1997